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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,100	07/10/2003	Yutaka Banba	35848	1988
116 7590 04/22/2008 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108				
EXAMINER				
RIZK, SAMIR WADIE				
ART UNIT		PAPER NUMBER		
2112				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/617,100

**Applicant(s)**

BANBA, YUTAKA

**Examiner**

SAM RIZK

**Art Unit**

2112

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

- Response to the applicant's amendment dated 2/28/2008
- Claims 1-13 have been Cancelled
- Amended claims 14-16 have been submitted for examination
- Amended claims 14-16 have been rejected

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. When claims depend on a recited property, a fact situation comparable to Hyatt is possible, where the claim covers every conceivable structure (means) for achieving the stated property (result) while the specification discloses at most only those known to the inventor.

Claim 16 is single means claims that do not comply with the statutes that require the claim language to be clear, concise and definite. See e.g., *In re Hyatt*, (CAFC) 218 USPQ 195 (6/6/1983).

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

2. Claim 15 is directed to non-statutory subject matter.

"Use of the decoding method of claim 14" is not a process, machine, manufacture, or composition of matter. Claim 15 should cite the method according to claim 14 and not the use of the method.

***Response to Arguments***

3. Applicant's arguments with respect to claim 14 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawahara et al. US patent no. 6434718 (Hereinafter Kawahara) and further in view of Schorman US patent no. 5309443 (Hereinafter Schorman).
  5. In regard to claim 14, Kawahara teaches:

- Claim 14 (Currently amended): A decoding method for a signal having been encoded under use of a channel coding per transmission frame (314) having a plurality of compressed frame data (310, 311,312, 313), including:
  - a) bits of said plurality of compressed frame data (310, 311,312, 313) grouped into a plurality of classes (320, 321,322) according to the degree degradation in decoding quality in the presence of transmission errors;  
(Note: Figures 2A, 2B and 2C and col. 3, line 28 and col. 4, lines (65-67) through col.5, lines (105) in Kawahara)
  - b) each of the plurality of classes (320,321,322) having been subjected to different channel coding processes under use of different error protection codes, the decoding method comprising the steps of:  
performing different decoding for transmission frames in each of the plurality of classes (320, 321,322) grouped in descending order of error protection,  
(Note: Figure 3 in Kawahara)  
ungrouping the plurality of compressed frame data (310, 311,312, 313) from the plurality of classes (320, 321,322), and  
(Note: Figure 3, reference character (105) in Kawahara)  
However, Kawahara does not teach:  
in each of the plurality of compressed frame data that is compressed

by way of a sub-band ADPCM mode, halting the process of updating a scale factor during ADPCM decoding per sub-band in the presence of an unrecoverable transmission error in said audio compressed frame data.

Schorman, in an analogous art, that teaches dynamic muting method for ADPCM coded speech teaches:

in each of the plurality of compressed frame data that is compressed by way of a sub-band ADPCM mode, halting the process of updating a scale factor during ADPCM decoding per sub-band in the presence of an unrecoverable transmission error in said audio compressed frame data.

(Note: FIG.1 , reference characters (16), (20) and 21) wherein Schorman teaches the limiter function that halt the scaling factor during the decoding of ACPCM, Note that data is being decoded in reference character (26) in presence of error (BAD Frame) in the compressed data).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Schorman that perform halting the process of updating a scale factor during ADPCM decoding per sub-band in the presence of an unrecoverable transmission error in said audio compressed frame data.

This modification would have been obvious to one of ordinary skill in the art, at the time the invention was made, because one of ordinary skill in the art would have recognized the need to conceal bad frame in audio speech.

6. In regard to claim 15, Kawahara teaches;

(Currently amended): Use of the decoding method of claim 14 on a coded signal wherein the bits of said compressed frame data are grouped into at least three classes (320,321,322) involving first class (320), second class (321) of which the degree of degradation of the decoding quality is smaller than that of the first class and third class (322) of which the degree of degradation of the decoding quality is smaller than that of the second class (321), and wherein first process "convolution coding and addition of CRC check codes is performed for bits classified as the first class (320), second process "convolution coding only" is performed for bits classified as the second class (321), and third process "no coding," is performed for bits classified as the third class (322).

(Note: col. 4, lines (35-39) and col. 4, lines (30-34) and col. 4, lines (42-46) in Kawahara)

7. Claim 16 is rejected for the same reasons as per claim

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Rizk whose telephone number is (571) 272-8191. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-Jacques can be reached on (571) 272-6962. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 2112

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronics Business Center (EBC) at 866-217-9197 (toll-free)

/Sam Rizk/

Examiner, Art Unit 2112

/JACQUES H LOUIS-JACQUES/

Supervisory Patent Examiner, Art Unit 2112